IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

| | | |
|---|---|---|
| ACCU-SPEC ELECTRONIC SERVICES, INC., Plaintiff | ) | |
| v. | ) | C.A. NO.: 03-394 E |
| CENTRAL TRANSPORT INTERNATIONAL, INC. and LOGISTICS PLUS, INC., Defendants | ) | |

RECEIVED

DEC 13 2004

CLERK U.S. DISTRICT COURT
WEST. DIST. OF PENNSYLVANIA

**ACCU-SPEC ELECTRONIC SERVICES, INC.'S
SUPPLEMENTAL BRIEF IN OPPOSITION TO
CENTRAL TRANSPORT INTERNATIONAL, INC.'S
MOTION FOR SUMMARY JUDGMENT**

In its Complaint, plaintiff Accu-Spec Electronic Services, Inc. ("Accu-Spec") alleged that Central Transport violated the cargo loss damage and regulations issued under the Motor Carrier Act when it failed to admit, or compromise Accu-Spec's amended claim within 120 days. (49 C.F.R. § 370.9[1]; see Ex. A to Central Transport's Concise Statement of Undisputed Material Facts in Support of Motion for Summary Judgment, ¶¶ 19-25). Accu-Spec also alleged that it is entitled to attorney's fees under 49 U.S.C. § 14704(e).

At oral argument on December 8, 2004, this Court asked counsel for Accu-Spec if counsel was aware of any authority in which a court had actually awarded attorney's fees to a plaintiff. At that time, counsel was not aware of any such authority, but subsequent research has revealed a recent decision from the Eighth Circuit Court of Appeals which affirms the award of

---

[1] In the Complaint, the applicable regulations were inadvertently referred to as 49 C.F.R.§ 307.9 instead of the correct 49 C.F.R. § 370.9

EXHIBIT
I

attorney's fees under Section 14704(e). Padrta v. Ledar Transport, Inc., 2004 WL 2495905 (8th Cir. Nov. 8, 2004).

In that case, the plaintiffs had filed suit under 45 U.S.C. § 14102 and 49 C.F.R. § 376.12(k) known as the "Truth in Leasing" regulations. Id., p. 1. These were the same regulations at issue in Owner-Operator Independent Drivers Association, Inc. v. New Prime, Inc., 192 F.3d 787, 784 (8th Cir. 1999) cited by Accu-Spec at oral argument.

In New Prime, the Eighth Circuit held that that the legislative history to the Interstate Commerce Termination Act contemplated that private parties may bring actions to enforce the Motor Carrier Act. Id. at 778. The New Prime court recognized that the ICCT Termination Act encompassed both the Truth-in-Lending regulations and the loss and damage regulations. Id., *citing* Committee Report. Therefore, the logic that permits private parties to bring private actions and recover attorney's fees to enforce the Truth-in-Lending regulations also applies to the loss and damage regulations now found in 49 C.F.R. § 370.1 et seq.

In the present case, Accu-Spec alleged that Accu-Spec submitted a claim to Central Transport pursuant to 49 C.F.R. § 370.3. Accu-Spec also alleged that it supplemented its claim pursuant to 49 C.F.R. § 370.5. Finally, Accu-Spec alleges that Central Transport violated the requirement of 49 C.F.R. § 370.9 by not admitting, declining, or compromising a claim within 120 days after Accu-Spec supplemented its claim. (See Ex. A to Central Transport's Concise Statement of Undisputed Material Facts in Support of Motion for Summary Judgment, ¶¶ 19-25).

None of the facts alleged in Central Transport's Concise Statement of Undisputed Material Facts pertains to Central Transport's handling of Accu-Spec's claim. Therefore, granting summary judgment at this time in favor of Central Transport is not warranted.

Respectfully submitted,

Thomas A. Pendleton

Thomas A. Pendleton
MacDONALD, ILLIG, JONES & BRITTON LLP
100 State Street, Suite 700
Erie, Pennsylvania 16507-1459
(814) 870-7600

Attorneys for Plaintiff
Accu-Spec Electronic Services, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a copy of this document was served upon all other parties appearing of record by First-Class United States Mail sent on December 13, 2004.

Thomas A. Pendleton

861100